

From: Robert Baruch
To: Microsoft ATR
Date: 1/23/02 1:01pm
Subject: Microsoft Settlement

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To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Dear Renata Hesse,

Under the Tunney Act, I am writing to comment and to express my concern and dissatisfaction about the Proposed Final Judgement ("PFJ").

Among other concerns, I have a few primary concerns.

1. I am dissatisfied about the PFJ's definition of "API" (Definition A). The PFJ defines an API to mean an interface between Microsoft Middleware and Microsoft Windows. I do not understand why this definition is limited to middleware published by Microsoft. Reducing Microsoft's monopoly would be better implemented by requiring Microsoft to document, for no fee, all of its API's, including undocumented API's, between Microsoft Windows and any other piece of software.

Even the definition of "middleware" (Definition J) is unsatisfactory, due to its loopholes, and I would prefer to keep the original definition as set forth in the Findings of Fact, paragraph 28.

2. I am dissatisfied with the way the PFJ allows Microsoft to erect competitive barriers through the use of patents. Not to get into a debate on the validity of intellectual property patents, but I feel that allowing Microsoft to set the licensing fee for a Microsoft patent to even one dollar per developer erects a barrier to their use by non-Microsoft developers to develop software that will work with either Microsoft Windows or other software that works with Microsoft Windows (e.g. software developed by existing licensees).

API's, protocols, and file formats are the methods one piece of software uses to communicate with another piece of software. By allowing these methods to be patented at all chills entry, but even given an existing patent, any licensing agreement short of royalty-free chills entry as well. Microsoft cannot be allowed to select the license terms of their patents which apply to API's, protocols, and file formats. And those license terms must be

royalty-free.

3. I am dissatisfied with the way the PFJ treats API's as the only method of communications between one piece of software and another. I would prefer that any mechanism of communications be included, including protocols (such as .NET and SMB) and file formats (such as Microsoft Word's .doc and Microsoft Excel's .xls). Allowing these mechanisms to remain undocumented sharply increases the entry barrier to non-Microsoft developers and to developers who are not Microsoft licensees.

Thank you for your time and effort in helping to prevent a continuation of Microsoft's monopolistic practices.

Yours,

Robert Baruch
76 Collins Lane
Rising Sun, MD 21911

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